

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>MOHAMMAD AJMAL</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	<b>NO. 07-206</b>
	:	
	:	
<b>ROBERT MUELLER, III, et al.</b>	:	

**MEMORANDUM AND ORDER**

**Kauffman, J.**

**July 17, 2007**

Plaintiff Mohammad Ajmal brings this action against the Federal Bureau of Investigation (“FBI”), Department of Homeland Security, and the United States Citizenship and Immigration Service (“USCIS”) (collectively, “Defendants”), seeking a writ of mandamus to compel the adjudication of his application for naturalization. Now before the Court is Defendants’ Motion to Dismiss the Complaint for lack of subject-matter jurisdiction. For the reasons that follow, the Motion will be denied.

**I. BACKGROUND**

Plaintiff, a citizen of Pakistan, became a legal permanent resident in January 2001. See Complaint, ¶1. On November 7, 2005, he filed an application for naturalization, which remains pending with the USCIS. See Complaint, Exhibit 1. Plaintiff’s naturalization interview was originally scheduled for April 12, 2006, but was cancelled in April 2006. See Complaint, ¶15. On November 20, 2006, Plaintiff was informed that his case was “pending final background checks,” which could delay the processing of his application “for an undetermined amount of time.” See Complaint, ¶15; Exhibit 3. Plaintiff’s interview remains unscheduled.

Plaintiff’s wife and son, who reside abroad, are ineligible for consular process and are

unable to travel to the United States until Plaintiff is naturalized. Plaintiff alleges that the prolonged separation from his family has had a deleterious effect on his physical and mental health. See Complaint, ¶¶17-18.

## **II. LEGAL STANDARD**

When considering a motion to dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1), the Court must “review only whether the allegations on the face of the complaint, taken as true, allege facts sufficient to invoke the jurisdiction of the district court.” Geisler v. Neri, 2007 WL 1612819, at \*2 (D.N.J. June 1, 2007) (citing Turicentro, S.A. v. Am. Airlines Inc., 303 F.3d 293, 300 (3d Cir. 2002)).

## **III. DISCUSSION**

The statute governing naturalization delineates a four-step process: (1) the application; (2) an investigation and background check; (3) an “examination” or interview with USCIS; and (4) the administration of the oath of allegiance. See 8 U.S.C. § 1446(a). Plaintiff’s application has not yet progressed beyond the second phase. While the statute provides for a cause of action against an agency that has failed to render a decision within 120 days *following* the examination, no time period is specified for scheduling such an examination. See 8 U.S.C. § 1447(b).

In support of his plea for a writ of mandamus compelling USCIS to process his application for naturalization, Plaintiff seeks to establish jurisdiction through the mandamus statute (28 U.S.C. § 1361), the Declaratory Judgment Act (28 U.S.C. § 2201 et seq.<sup>1</sup>), and the

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<sup>1</sup> The declaratory judgment statute, 28 U.S.C. § 2201, is not an independent basis for subject matter jurisdiction in the district courts. See, e.g., Zheng v. Reno, 166 F. Supp. 2d 875, 878 (S.D.N.Y. 2001); Chaudry v. Chertoff, 2006 WL 2670051, at \*3 (D. Minn. Sept.18,

federal question statute (28 U.S.C. § 1331), in conjunction with the Administrative Procedures Act (“APA”) (5 U.S.C. §704, §706(1) and §555(b)). Defendants argue that this Court lacks subject-matter jurisdiction to consider Plaintiff’s claim.

The APA authorizes courts to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §706(1).<sup>2</sup> In Norton v. S. Utah Wilderness Alliance, 542 U.S. 55, 63 (2004), the Supreme Court limited that authority to compelling ministerial, non-discretionary actions – actions the agency is legally *required* to take. Relying on a factually analogous case originating in the Northern District of Georgia, Badier v. Gonzales, 2006 WL 4079085 (N.D. Ga. Dec. 1, 2006), Defendants argue that since there is no statutorily-mandated deadline for scheduling an examination, Plaintiff’s interview cannot be considered “unlawfully withheld” or “unreasonably delayed” for purposes of the APA. In the absence of a non-discretionary duty to act, Defendants contend that the Court lacks jurisdiction to consider Plaintiff’s claim. The Court disagrees.

The majority of courts considering the matter have held that the mere fact that no definitive deadline has been established for scheduling an examination does not mean that USCIS possesses “unfettered discretion to relegate aliens to a state of limbo, leaving them to languish there indefinitely.” Kaplan v. Chertoff, 481 F. Supp. 2d 370, 399 (E.D. Pa. 2007); see

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2006).

<sup>2</sup> Consideration of the mandamus and APA claims involves a similar analysis. Sze v. Immigration and Naturalization Service, 1997 WL 446236, at \*4 (N.D. Cal. July 24, 1997); see also Yan v. Mueller, 2007 WL 1521732, at \*8 (S.D. Tex. May 24, 2007) (“Because both statutes offer similar means of compelling an agency to take action which by law it is required to take, claims made under this provision of the APA and the federal mandamus statute are subject to the same standard.”).

also Yong Tang v. Chertoff, 2007 WL 1821690, at \*7 (D. Mass. June 26, 2007); Yu v. Brown, 36 F. Supp. 2d 922, 933 (D.N.M. 1999); Duan v. Zamberry, 2007 WL 626116, at \*4 (W.D. Pa. Feb. 23, 2007). To conclude otherwise would render meaningless the APA's directive that agencies resolve matters presented to them "within a reasonable time." 5 U.S.C. §555(b).

Indeed, even in the absence of specific deadlines, the USCIS has a non-discretionary duty to adjudicate applications for naturalization without unreasonable delay. See Kaplan, 481 F. Supp. 2d at 399; Duan, 2007 WL 626116, at \*4; Damra v. Chertoff, 2006 WL 1786246, at \*3 (N.D. Ohio June 23, 2006) ("It is well recognized that immigration officials have a duty to process naturalization applications within a reasonable time frame."); Alkenani v. Barrows, 356 F. Supp. 2d 652, 656 (N.D. Tex. 2005) ("Although immigration officials are vested with broad discretion in making the ultimate decision whether to grant or deny an application for naturalization, they have a non-discretionary duty to process the application within a reasonable time."). Similarly, the FBI has a mandatory, non-discretionary duty to complete criminal background checks within a reasonable period of time. See Kaplan, 481 F. Supp. 2d at 400. Defendants cannot simply choose not to adjudicate an application for naturalization. See Yong Tang, 2007 WL 1821690, at \*5 ("grant of adjustment of status is not legally required, but adjudication of the application one way or the other certainly is."). Accordingly, the Court concludes that it possesses subject matter jurisdiction to consider Plaintiff's claim, and will deny Defendants' Motion to Dismiss.<sup>3</sup>

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<sup>3</sup> Defendants have moved to dismiss solely on jurisdictional grounds.

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**ORDER**

**AND NOW**, this 17<sup>th</sup> day of July, 2006, upon consideration of Defendants' Motion to Dismiss (docket no. 4), and Plaintiff's Opposition thereto (docket no. 5), and for the reasons stated in the accompanying Memorandum, it is **ORDERED** that the Motion is **DENIED**.

**BY THE COURT:**

/s/ Bruce W. Kauffman  
**BRUCE W. KAUFFMAN, J.**